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 Attorneys for Debtors

**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED
 FUND, LLC,
 Debtor.

In re:
 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 Debtor.

In re:
 USA SECURITIES, LLC,
 Debtor.

Affects:

- ☒ All Debtors
- ☐ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC

Case Nos. BK-S-06-10725 LBR
 Case Nos. BK-S-06-10726 LBR
 Case Nos. BK-S-06-10727 LBR
 Case Nos. BK-S-06-10728 LBR
 Case Nos. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under
 Case No. BK-S-06-10725 LBR

**SECOND SUPPLEMENTAL
 DECLARATION OF THOMAS J.
 ALLISON IN SUPPORT OF DEBTORS'
 MOTIONS [AFFECTS ALL DEBTORS]**

Date of Hearing: May 18, 2006
 Time of Hearing: 9:30 a.m.

SCHWARTZER & MCPHERSON LAW FIRM

2850 South Jones Boulevard, Suite 1

Las Vegas, Nevada 89146-5308

Tel: (702) 228-7590 · Fax: (702) 892-0122

☐ USA First Trust Deed Fund, LLC

I, Thomas J. Allison, hereby declare, verify and state as follows:

1. I make this Second Supplemental Declaration as additional support for various motions of USA Commercial Mortgage Company ("USACM") and its four affiliates who filed bankruptcy petitions in this Court on April 13, 2006 (collectively, the "Debtors"), including the "Motion for Order Authorizing Reimbursement of Due Diligence Expenses of Potential Post-Petition Lender" (the "Due Diligence Expenses Motion") and the "Motion Authorizing Debtor, Pursuant to 11 U.S.C. § 105 and § 363(b)(1), to Accept Loan Payment Proceeds and Provide Partial Releases or Full Releases in Connection With the Sale of Properties Securing Loans Originated by the Debtor to Third Party Borrowers, and to Ratify Partial Releases Previously Provided by the Debtor" (the "Partial Releases Motion"). My Second Supplemental Declaration is based upon personal knowledge and the facts set forth herein.

2. It appears that as of April 13, 2006 (the "Petition Date"), USACM was acting as the loan servicer for approximately 115 separate loans (the "Serviced Loans") having a combined outstanding loan balance of approximately \$962 million. Attached as Exhibit A to the Supplemental Declaration of Thomas J. Allison dated May 2, 2006 that was e-filed with the Court on May 2, 2006 (Docket No. 130), is a spreadsheet created under my direction by the Mesirow team providing preliminary information for each of the Serviced Loans, including the loan name, whether the loan is performing or non-performing, number of investors, origination date, outstanding balance, unpaid interest, and the percentage of the loan held by two of the Debtors in these related bankruptcy cases, USA Capital First Trust Deed Fund, LLC ("Capital First") and USA Capital Diversified Trust Deed Fund, LLC ("Diversified") (collectively the "Funds"), by USACM, and by other "Direct Lenders" (as defined below).

3. I have directed that the Mesirow team review the loan files for each of the Serviced Loans. Based on that review, it appears that the vast majority of the Serviced

1 Loans are secured by a trust deed on a commercial real estate project (the "Projects"),
2 many of which are construction loans for construction Projects that are not yet completed.

3 4. It appears that as of the Petition Date approximately 62 of the Serviced
4 Loans were delinquent in the payment of interest or otherwise could be considered non-
5 performing (the "Nonperforming Loans"). The Nonperforming Loans represent 72%
6 percent in outstanding loan balance of the Serviced Loans.

7 5. There are approximately 3,600 investors (the "Direct Lenders") whose
8 names appear as a "Lender" in the loan documents for one or more of the Serviced Loans.
9 The two Funds are included among the Direct Lenders.

10 6. Prior to April 2006, USACM regularly made interest payments to Direct
11 Lenders each month regardless of whether the particular Serviced Loans relating to each
12 Direct Lender were performing or nonperforming. For example, during the first three
13 months of 2006, USACM collected on average approximately \$5.3 million per month in
14 interest payments on the Serviced Loans but paid out on average approximately \$9.7
15 million per month to the Direct Lenders. It appears that a large portion of the Direct
16 Lenders received monthly payments from USACM prior to the Petition Date that such
17 Direct Lenders were not entitled to receive (because they were invested, at least in part, in
18 one or more Nonperforming Loans), and thus such Direct Lenders owe a debt in an amount
19 which is yet to be determined for the amounts overpaid to them.

20 7. Capital First has an interest as a Direct Lender in 53 of the Serviced Loans --
21 in 45 loans it owns only a fractional interest along with other Direct Lenders, and in 8
22 loans it is the sole Direct Lender. Further, of the 53 total Serviced Loans in which Capital
23 First has an interest, 29 (55% in number) are Nonperforming Loans.

24 8. Diversified has an interest as a Direct Lender in 23 of the Serviced Loans --
25 in 16 loans it owns only a fractional interest along with other Direct Lenders, and in 7
26 Serviced Loans it is the sole investor. Further, of the 23 total loans in which Diversified
27 has an interest, 20 (87% in number) are Nonperforming Loans.
28

1 13. When the Due Diligence Expenses Motion was filed on May 8, 2006, the
2 negotiations with Fortress were not yet completed. The parties anticipated that the terms
3 in the draft Term Sheet that was under consideration at that time might change prior to the
4 issuance of a firm commitment from Fortress, which was expected prior to the time the
5 Due Diligence Expenses Motion was set for hearing.

6 14. A Commitment Letter (the "Commitment Letter") signed by Fortress and
7 dated May 12, 2006, has been delivered to me on behalf of the Debtors. As contemplated
8 by the Due Diligence Expenses Motion, a copy of the Commitment Letter was attached as
9 Exhibit "1" to the "Notice of Commitment Letter for DIP Financing" that was e-filed with
10 the Court on May 16, 2006, as Docket No. 254. A true and correct additional copy of the
11 Commitment Letter is attached hereto as Exhibit A and is incorporated herein.

12 15. In my negotiations with Fortress, before Fortress was willing to commit
13 additional time and resources to evaluating a potential Post-Petition Loan, Fortress stated
14 that it would require that the Debtor agree (with Court approval) to reimburse Fortress for
15 actual expenses (including Fortress's reasonable attorney fees) incurred by Fortress in
16 connection with completion of due diligence and other matters associated with the
17 potential Post-Petition Loan. Fortress has asked that the Debtors provide a cash deposit
18 (the "Deposit") in the amount of \$150,000, to be applied by Fortress toward actual
19 expenses incurred or to be incurred in completing due diligence for the potential Post-
20 Petition Loan. The amount of the Deposit was previously included in the Budget that was
21 attached as Exhibit B to the Supplemental Declaration of Thomas Allison dated May 2,
22 2006 that was e-filed with the Court on May 2, 2006 (Docket No. 130). Indeed, while
23 Fortress has delivered a Commitment Letter to the Debtors, the Commitment remains
24 conditioned on the payment of the Deposit and the completion of due diligence (including
25 legal due diligence) which the Deposit will allow for and facilitate. As set forth in the
26 Commitment Letter, if the Deposit is not approved by the Court on May 18, 2006 and paid
27
28

1 to Fortress by May 19, 2006, the Commitment Letter will terminate. See, Exhibit A
2 attached hereto.

3 16. In exchange for Debtors' agreement to seek approval for the Deposit to
4 reimburse the due diligence expenses of Fortress, Fortress has agreed that if Fortress
5 concludes, for any reason, not to proceed with the Post-Petition Loan, Fortress will deliver
6 to the Debtors copies of all written work-product created by Fortress in its due diligence
7 review of the potential Post-Petition Loan (excluding documents protected by
8 attorney/client or attorney work product privileges).

9 17. It is my business judgment that the payment of due diligence expenses to a
10 debtor-in-possession lender is customary for debtor-in-possession financing transactions,
11 and that the amount of the Deposit is a reasonable estimate of the amount of due diligence
12 expenses that will reasonably be incurred by Fortress.

13 18. It is my business judgment that there are at least three valid business reasons
14 for obtaining the Post-Petition Loan for the Debtors: (a) Debtors may need additional
15 sources of funds to pursue all necessary collection actions with respect to Nonperforming
16 Loans, given the number and amount of Nonperforming Loans which are currently not
17 generating cash to pay servicing fees to fund these actions; (b) Debtors may need
18 additional liquidity to fund administrative and operational expenses in the event that the
19 timing of payments on the Serviced Loans from which Debtors' servicing fees and other
20 contractual costs and fees are deducted (and which the Court has approved as funding
21 sources) are irregular and/or disrupted and do not match the funding requirements for the
22 timely payment of Debtors' administrative and operational expenses; and (c) Debtors need
23 a source of funding for additional loans to the Borrowers with Construction Budget
24 Shortfalls to allow such Borrowers to complete their Construction Projects if the Debtors
25 determine that additional funding is necessary or appropriate to preserve value of the
26 underlying collateral of the Serviced Loans for the Direct Lenders, the Funds, the Fund
27 Members, and USACM and such funding is then approved by the Court.
28

FUNDING ADMINISTRATIVE AND OPERATIONAL EXPENSES

19. Mesirow, with assistance from USACM's personnel and attorneys, is engaging in a loan-by-loan credit and collateral evaluation, arranging for appropriate appraisals and checks on collateral, and commencing collection activities on Nonperforming Loans (including foreclosures, if necessary, and collections on guarantees) and determining the most appropriate way to bring each Nonperforming Loan to a performing status. These tasks are critical tasks that must be accomplished in order to analyze and safeguard the interests of all Direct Lenders (including the interests of the Funds as Direct Lenders) and Fund Members.

20. Mesirow is preparing a ledger for each loan as requested by the SEC and the Nevada Mortgage Lending Division. These ledgers will allow Direct Lenders to determine the status of each Serviced Loan in their portfolios.

21. Mesirow is preparing an account reconciliation for each Direct Lender and for each Fund Member (to the extent there are Fund Members who are not also Direct Lenders). These reconciliations will indicate amounts due to the Direct Lender on account of each Service Loan in their portfolios, as well as amounts that have been overpaid on Nonperforming Loans. Principal payments received by USACM but not remitted will also be indicated. The reconciliations for the Fund Members will indicate the positions of the respective Funds with regard to each Serviced Loan in their portfolios, as well as the Fund Members' percentage ownership interests in the Funds.

22. In its Limited Opposition to the Partial Releases Motion, the Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC (the "First Trust Deed Committee") has requested that "USACM be required to report monthly to the Court the following: (i) the sale proceeds that USACM actually received in connection with the proposed sales and an accounting for such funds on a per loan basis; and (ii) the sale proceeds that were distributed to any first priority lender and the amount outstanding on any related first priority loan after such payments." I have instructed my

1 staff and my attorneys to include these monthly reports as requested by the First Trust
 2 Deed Committee as part of the monthly Operating Reports to be filed by the Debtors with
 3 the Court.

4 23. Mesirow is instituting appropriate internal financial and accounting controls
 5 and loan servicing audit trails so that the problems that resulted in the Debtors' bankruptcy
 6 filings will not recur. Mesirow is also attempting to trace all transactions with non-debtor
 7 insiders or affiliated entities; and Mesirow will follow up to enforce and collect any insider
 8 or affiliate debts owed the Debtors.

9 24. The Debtors' Revised Budget (the "Budget"), which was attached as Exhibit
 10 B to the Supplemental Declaration of Thomas J. Allison that was e-filed on May 2, 2006
 11 (Docket No. 130), outlines the Budget that the Debtors have prepared for payment of the
 12 administrative costs and collection costs that must be undertaken by the Debtors to
 13 preserve and increase value for the Debtors, the Direct Lenders, and the Fund Members.
 14 However, the Budget only contemplated the appointment of one creditors committee for
 15 the five Debtors, so it is possible that the professional fees associated with payment for
 16 counsel to the four committees that were just appointed by the United States Trustee will
 17 be even higher than those contemplated by the Budget, requiring additional sources of
 18 funds for the Debtors to operate in Chapter 11.

19 25. If the Court approves the payment of the Deposit, the Deposit will be paid
 20 from the sources outlined in and in accordance with the Budget. The Debtors are not
 21 asking that other funds being held by the Debtors be used to pay the Deposit, but only that
 22 the Deposit be paid from those funding sources outlined in the Budget and previously
 23 approved by the Court.

24 LIQUIDITY CONCERNS

25 26. Mesirow has initiated measures for collecting unpaid interest on the
 26 Nonperforming Loans, as well as implementing improved loan servicing procedures.
 27 However, even with these operational changes, the regular payment streams of payments
 28

1 being made to USACM as Servicer of the Serviced Loans have been disrupted because of
 2 the filing of the bankruptcy petitions for the Debtors. Moreover, interest is not being paid
 3 on a regular basis on the large number of Nonperforming Loans. Therefore, the Debtors
 4 cannot currently count on a regular stream of payments being made to USACM as Servicer
 5 from which the servicing fees and other contractual costs and fees that will be used to fund
 6 the Budget will be deducted.

7 27. The Debtors are in need of additional liquidity in the form of the Post-
 8 Petition Loan in order to be able to timely pay their administrative expenses and
 9 operational expenses as they are incurred on a regular basis, as contemplated by the
 10 Budget. To the extent that there are insufficient funds on hand on any particular date from
 11 the funds which the Court has authorized the Debtors to use for payment of administrative
 12 and operational expenses incurred to collect unpaid interest and principal on the Serviced
 13 Loans, the Debtors can draw on the Post-Petition Loan in order to cover any such
 14 insufficiency.

15 FUNDING FOR CONSTRUCTION BUDGET SHORTFALLS

16 28. Attached hereto as Exhibit B and incorporated herein is a list prepared by
 17 Mesirow of thirty (30) of the Serviced Loans which have Construction Budget Shortfalls.
 18 The amount of the Construction Budget Shortfall for each of these 30 Serviced Loans (the
 19 "Shortfall Loans") is listed on Exhibit B. The total amount of the Construction Budget
 20 Shortfalls is \$73,122,216.

21 29. I believe that the Borrowers for the Shortfall Loans requested loan funding
 22 for only a portion of the construction budgets for their various Projects because they
 23 wanted to avoid having to pay interest from the inception of the Shortfall Loans on the full
 24 amount of the loan funds needed to cover their entire construction budgets for their
 25 completed Projects. I believe that the Borrowers for the Shortfall Loans are planning to
 26 build their Projects in stages, and are looking to obtain additional loan funding for the
 27 future stages of their Projects from USACM.
 28

1 30. The Projects for which the Shortfall Loans are being used for construction
2 purposes are not completed Projects. It is my business judgment that most, if not all, of the
3 Borrowers for the Shortfall Loans will need additional loan funding of up to the amount of
4 the Construction Budget Shortfalls for each Shortfall Loan in order to complete their
5 Projects.

6 31. It is my business judgment that the value of the collateral for the Shortfall
7 Loans will be preserved and greatly enhanced for the benefit of the Direct Lenders, the
8 Funds, the Funds Members, and the Debtors if the Projects can be completed as
9 contemplated by their Borrowers. A completed construction project that is a candidate for
10 a sale to an investor or a take-out loan from a permanent financing source is much more
11 likely to generate the funds needed to pay off the Shortfall Loans than an uncompleted
12 construction project that is likely to be encumbered with mechanic's liens and embroiled in
13 other litigation.

14 32. It is my belief that USAMC does not have the obligation, but has the right,
15 with Court approval, to fund additional loan funds in the amount of the Construction
16 Budget Shortfalls for each of the Shortfall Loans. It is my business judgment that USAMC
17 should seek Court approval to use some of the proceeds from the Post-Petition Loan to
18 fund the Construction Budget Shortfalls for most, if not all, of the Shortfall Loans.
19 USAMC will make its determination whether or not to seek Court approval to fund a
20 particular Construction Budget Shortfall from the Post-Petition Loan based upon appraisals
21 and other customary due diligence lending standards to be applied by the Debtor to each
22 Shortfall Loan and each Project, including whether or not the particular Shortfall Loan is a
23 Nonperforming Loan.

24 33. USACM has filed a Motion seeking authority to engage an outside appraisal
25 firm to evaluate all of the real estate collateral securing the Serviced Loans. These
26 appraisals will assist USACM in its due diligence determination whether or not to fund a
27 particular Construction Budget Shortfall for a particular Project.
28

OBJECTIONS TO PARTIAL RELEASES MOTION

34. The Serviced Loan repayments that the Debtor is receiving from the Borrowers as contemplated by the Partial Releases Motion are being held in a separate bank account established by USAMC, and Mesirow is keeping accurate accounting records to account for such loan repayments on a Serviced Loan by Serviced Loan basis. The servicing fees and other contractual fees and costs that the Court has authorized to be used by the Debtors are being deducted from these loan repayments and are being deposited into a separate Debtor-in-Possession bank account, and are not being commingled with the net Serviced Loan repayments that are held in a separate account.

Executed this 17th day of May, 2006.

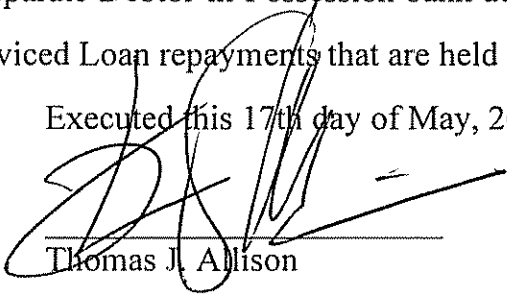

Thomas J. Allison

EXHIBIT “A”

Fortress Credit Corp
1345 Avenue of the Americas
46th Floor
New York, New York 10105
(212)798-6100
Facsimile: (212) 798-6099
Attention: Constantine Michael Dakolias and Joseph Tansey

COMMITMENT LETTER

May 12, 2006

USA Commercial Mortgage Company, et al – Debtor-in-Possession Credit Facility

Reference is made to that certain Term Sheet dated as of April 21, 2006, executed by USA Commercial Mortgage Company; USA Capital Realty Advisors, LLC; USA Securities, LLC; USA Capital First Trust Deed Funding, LLC, and USA Capital Diversified Trust Deed Funding, LLC, all jointly and severally, as Debtors-in-Possession in Case Nos. BK-S-06-10725, BK-S-06-10726, BK-S-06-10727, BK-S-06-10728 and BK-S-06-10729 (joint administration proposed under Case No. BK-S-06-10725), filed April 13, 2006, in the United States Bankruptcy Court for the District of Nevada (Las Vegas Division) executed by Borrowers on May 2, 2006, and by Fortress Credit Corp. on May 3, 2006 (the "Term Sheet"). A copy of the Term Sheet executed by Fortress Credit Corp and by Borrowers is attached to this Commitment Letter and is incorporated and made a part hereof, as though set forth in full herein. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Term Sheet.

As you know, Fortress has commenced its due diligence activities notwithstanding that Borrowers have not yet paid the Initial Deposit. Such activities have including reviewing Borrowers' files in Las Vegas, interviewing certain of Borrowers' employees and site visits to ten (10) properties representing loans with aggregate stated unpaid principal balances of approximately \$107 million. Based upon such preliminary due diligence activities, and subject to the terms and conditions set forth herein and in the Term Sheet, DIP Lenders are pleased to issue this Commitment to make the DIP Revolving Loan described in the Term Sheet, as contemplated by the section of the Term Sheet captioned "Commitment" appearing at page 11 of the Term Sheet. Accordingly, the Term Sheet is now a Commitment to make the DIP Loan subject to the occurrence and satisfaction of the conditions precedent set forth therein, excluding from said conditions precedent item 12 ("such other conditions as Fortress may determine").

We note that because of the timing of the hearings as ordered by the Bankruptcy Court, the following dates are now deemed inserted in the Term Sheet for purposes of this Commitment.

Term Sheet Caption:

Date:

Closing Date

July 7, 2006

Other Terms and Conditions

(Condition #2)

Approval of Term Sheet	June 5, 2006
Approval of Final Financing Order	June 23, 2006
Closing	July 7, 2006
Final Financing Order	June 23, 2006

Exclusivity 10 days following Bankruptcy Court
Approval of Term Sheet

Termination June 5, 2006

(Termination Date and Bankruptcy
Court Approval of Term Sheet and
Commitment Letter)

Acceptance May 19, 2006

This Commitment will become effective upon your acceptance hereof, Bankruptcy Court approval of your payment to Fortress of the Initial Deposit, and actual payment of the Initial Deposit, all on or before May 18, 2006. If such acceptance is not received, Bankruptcy Court approval of payment of the Initial Deposit is not obtained, or payment of the Initial Deposit is not effected, by the close of business on May 18, 2006, the Term Sheet will terminate and this Commitment Letter will be of no further force or effect.

Very truly yours,

Fortress Credit Corp.

By:

Constantine Michael Dakolias

Its:

Chief Credit Officer

AGREED AND ACCEPTED AS OF THIS
____ DAY OF MAY, 2006:

USA COMMERCIAL MORTGAGE COMPANY, LLC

USA SECURITIES, LLC

USA CAPITAL REALTY ADVISORS, LLC

USA CAPITAL FIRST TRUST DEED FUNDING, LLC

USA CAPITAL DIVERSIFIED TRUST DEED FUNDING, LLC

By:

Name: Thomas J Allison

Title: Chief Executive Officer of all such entities

May-02-2006 01:30pm From:7029392131

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Confidential – For Discussion Purposes Only – Not a Commitment to Lend

Fortress Credit Corp
1345 Avenue of the Americas
46th Floor
New York, New York 10105
(212)798-6100
Facsimile: (212) 798-6099
Attention: Constantine Michael Dakolias and Joseph Tansey

TERM SHEET

April 24, 2006

USA Commercial Mortgage Company, et al – Debtor-in-Possession Credit Facility

The terms and conditions summarized below do not represent a financing commitment from Fortress. Such terms and conditions are intended as a summary outline of a commitment which is conditioned in all respects upon completion of due diligence, negotiation of definitive documentation and final approval by Fortress, and do not purport to summarize all of the conditions, covenants, representations, warranties and other provisions which would be contained in definitive documentation satisfactory in form and substance to Fortress. This Term Sheet is not a commitment to make a loan and Fortress shall not be under any obligation to do so. Rather, upon acceptance of this Term Sheet and payment of the required deposit, this Term Sheet shall evidence the intention of Fortress to commence its due diligence and its internal financing approval process. Any provision of financial accommodations under such debtor-in-possession credit facility shall be further subject to the terms and conditions as set forth below, and Bankruptcy Court approval.

I. General Terms

Borrowers: USA Commercial Mortgage Company; USA Capital Realty Advisors, LLC; USA Securities, LLC; USA Capital First Trust Deed Funding, LLC, and USA Capital Diversified Trust Deed Funding, LLC, all jointly and severally, as Debtors-in-Possession in Case Nos. BK-S-06-10725, BK-S-06-10726, BK-S-06-10727, BK-S-06-10728 and BK-S-06-10729 (joint administration proposed under Case No. BK-S-06-10725), filed April 13, 2006, in the United States Bankruptcy Court for the District of Nevada (Las Vegas Division).

DIP Lender(s): Fortress Credit Corp. and its affiliates, designees and participants (collectively, "Fortress"), and third parties reasonably acceptable to Fortress (collectively with Fortress, the "DIP Lenders").

DIP Agent: Fortress, in such capacity as DIP Agent.

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DIP Revolving Loan: DIP Lenders to provide Borrowers with a \$25,000,000 revolving credit facility (the "DIP Loan") as limited by the Collateral Maintenance Covenants (as defined below).

Minimum Advance: \$1,000,000

Maximum Committed Amount: \$25,000,000.

Use of Proceeds: To pay (i) operating expenses, limited capital expenditures and other amounts for general corporate and ordinary course purposes of the Borrowers as approved by DIP Agent and DIP Lenders and (ii) such other administrative payments as may be authorized under the Final Financing Order (as defined below), including ongoing administrative expenses associated with the chapter 11 case, all as authorized by the DIP Loan.

Operating Budget: The operating budget, subject to the approval of the DIP Agent and the DIP Lenders, to consist of the Borrowers' estimated projected cash flow position on a rolling 13-week basis, commencing as of the Closing of the DIP Loan (the "Budget") and to include, on a line-item basis, projected weekly cash receipts and expenditures and a weekly reconciliation report which compares the actual cash flow results (receipts and disbursements) against the prior week's cash flow projections (receipts and disbursements, indicating the cumulative percentage variance, if any, of actual results versus projections for such week as set forth therein, together with management's explanation for such variance, such variance not to exceed 5% on a cumulative basis). Upon approval of DIP Agent and the DIP Lenders to the Budget, any subsequent changes to the Budget may be made only on approval of the DIP Agent and DIP Lenders. Budget to include monthly reimbursement of the reasonable fees and expenses of the professionals of DIP Agent and DIP Lenders.

Maturity, Extension, Fee: **One Extension** The DIP Loan to be repaid in full in immediately available funds on the Maturity Date, to be defined as the earlier of (i) twelve (12) months after the initial loan closing, subject to one six-month extension upon payment of an Extension Fee in an amount equal to one percent of the Maximum Committed Amount, and subject to satisfaction of customary conditions for the extension of a revolving credit facility of like size and nature to the DIP Loan, (ii) conversion of any of the Borrowers' chapter 11 cases to a case under chapter 7 of the Bankruptcy Code, and (iii) confirmation of Borrowers' plan of reorganization and Borrowers' emergence from Chapter 11 on the effective date of such plan (the "Maturity Date").

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Interest: Interest shall be payable in cash on the outstanding amount of the DIP Loan monthly in arrears on the first business day of each month at a rate equal to LIBOR + 3.50% per annum.

Default Interest: Upon the occurrence and during the continuance of any event of default under the DIP Loan and at the election of the DIP Lenders, interest to be payable on the outstanding amount of the DIP Loan at 3.0% above the then applicable interest rate.

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Closing Date: The date of the closing of the DIP Loan is expected to be 30 days after the execution of this Term Sheet, but in no event shall such closing occur later than [*****], 2006, or such other date as Borrowers and DIP Lenders may agree in writing (the "Closing" or "Closing Date").

Origination Fee: Borrowers shall authorize DIP Lenders to withhold from the original proceeds of the DIP Loan a non-refundable origination fee discount of 1.50% of the Maximum Committed Amount, which shall be fully earned at the initial loan closing.

Unused Facility Fee: 50 basis points (0.50%) of Maximum Committed Amount per annum on the unused amount of the Maximum Committed Amount payable monthly in arrears during the term of the DIP Loan based on the average outstanding balance of the DIP Loan during the preceding month.

Collateral Management Fee: \$10,000 per calendar quarter or portion thereof, payable to DIP Agent on Closing Date and on first day of each calendar quarter thereafter until the DIP Loan is fully repaid.

Nature of Fees: All fees shall be paid in immediately available funds on their respective due dates and shall be fully earned when due and shall be non-refundable when paid.

ROFO on Future Funding Obligations, Additional DIP Loans: Fortress to have a ten (10) business day right of first offer on all of Borrowers' future funding obligations with respect to existing loans as of the Petition Date (the aggregate amount of which Borrowers have identified as being \$68,106,500), and Fortress will consider funding such future advances on a loan by loan basis, in Fortress' sole and absolute discretion and subject in each instance to Bankruptcy Court approval (each such funding by Fortress, an "Additional DIP Loan"). It is understood that, pursuant to Bankruptcy Court order, each Additional DIP Loan will prime prior advances under the existing loan or loans, but will not participate in collateral for the DIP Loan. The Additional DIP Loans will be term loans, with expected origination fees of between one and two percent of face amount, interest rates of between LIBOR plus 3.00% and LIBOR plus 10.00%, depending on the particular risks involved, with all of DIP Lenders' expenses to be reimbursed, and other terms and conditions as customary for loans of similar risk profile, amount and tenor.

II. Additional Terms

Amortization: None – aggregate principal amount due on Maturity Date.

Optional Prepayment: Borrowers to have the right to voluntarily repay any or all advances under the DIP Loan at any time without premium or penalty in

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minimum increments to be agreed upon, but subject to payment of the Unused Facility Fee for the balance of the remaining stated term of the DIP Loan. Prepayment of Additional DIP Loans shall be in accordance with their respective terms and may include customary make-whole provisions.

**Mandatory
Prepayments:**

Mandatory prepayments of the DIP Loan shall be made upon the occurrence of certain events (e.g., asset dispositions and insurance claims), equity issuances, changes of control and other circumstances to be negotiated and subject to approval of the DIP Agent and DIP Lenders.

Security:

To secure all of the obligations under the DIP Loan, DIP Agent, for the benefit of the DIP Lenders, to receive, pursuant to Sections 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code, the Final Financing Order and the definitive DIP Loan documents, valid, enforceable, and fully perfected security interests in and liens upon all prepetition and postpetition assets of the Borrowers, whether now existing or hereafter acquired or arising (collectively, the "DIP Collateral"), which liens shall have the priority set forth below. DIP Collateral to include any proceeds from avoidance actions recovered or voided under chapter 5 of the Bankruptcy Code). DIP Collateral subject to carve-out of customary administrative expenses expressly approved by the Bankruptcy Court, in amounts to be negotiated.

Liens and security interests with respect to DIP Collateral not to be subject to challenge and to attach and become valid and perfected immediately upon entry of the Final Financing Order (as defined below) without the requirement of any further action by DIP Agent or DIP Lenders. DIP Collateral to be free and clear of other liens, claims and encumbrances, except valid, perfected, enforceable and unavoidable liens in existence as of the petition date, if any, and other permitted liens and encumbrances acceptable to DIP Agent and DIP Lenders.

All obligations of Borrowers under and with respect to the DIP Loan (the "DIP Obligations") to enjoy superpriority administrative expense status under Section 364(c)(1) with priority over all other costs and expenses of the kinds specified in, or ordered pursuant to, Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 726 or any other provisions of the Bankruptcy Code, subject to the carve-out as authorized and approved by DIP Agent and the DIP Lenders under the Budget.

**Representations and
Warranties:**

The documentation for the DIP Loan and related collateral matters shall contain such representations and warranties as are customary

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for DIP loan transactions and investments of a similar size and nature, including but not limited to representations regarding due organization, enforceability, litigation and claims, environmental, taxes, other debts, leases and material contracts, affiliate transactions, compliance with laws, and no brokers.

Financial Covenants:

The documentation for the DIP Loan shall contain customary financial covenants for DIP loan transactions and investments of a similar size and nature and will be set to a discount (in an amount to be negotiated and acceptable to DIP Agent and DIP Lenders) of Borrowers' monthly cash flow projections submitted to the Bankruptcy Court.

Collateral Maintenance Covenants:

Borrowers shall at all times maintain a minimum of \$1,000,000 in cash.

Negative Covenants:

The documentation for the DIP Loan shall contain negative covenants of Borrowers customary for loan transactions and investments of a similar size and nature, including, but not limited to, the following:

1. No debt other than the DIP Loan (except as may be expressly permitted in the DIP Loan Agreement);
2. No liens except existing liens acceptable to Fortress and the liens securing the DIP Loan;
3. No changes in the operations of Borrowers;
4. No capital expenditures above specified levels;
5. No transactions with or payments to affiliates, subsidiaries, equity owners or related parties;
6. No changes in structure or jurisdiction of organization;
7. No new loans made by Borrowers; and
8. No mergers or acquisitions or sales of assets outside the ordinary course of business.

Affirmative Covenants:

The documentation for the DIP Loan shall include affirmative covenants of Borrowers, customary for loan transactions and investments of a similar size and nature including, but not limited to, covenants requiring Borrowers to:

1. In addition to updating the Budget on a weekly basis, provide monthly financial statements, monthly compliance

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certificates, annual audits, projections, copies of material agency and litigation filings, copies of all pleadings and documents filed in the bankruptcy case as well as other information that DIP Agent or DIP Lenders may request from time to time;

2. Maintain adequate hazard, property & casualty, and business interruption insurance;
3. Protect its intellectual property; and
4. Provide DIP Lenders access to Borrowers' information.

Defaults:

The DIP Loan shall include Events of Default customary for DIP loan transactions of a similar size and nature, including, but not limited to:

1. Failure to pay interest and principal when due with respect to any portion of the DIP Loan;
2. Failure to comply with or observe covenants, including compliance with the Budget taking into account authorized variances;
3. Default under other debt (as may be permitted under the DIP Loan Agreement);
4. Material Adverse Change;
5. Misrepresentation or breach of warranty;
6. Dismissal of any of the Borrowers' bankruptcy cases, conversion of any of the Borrowers' bankruptcy cases to a case under chapter 7 of the Bankruptcy Code, or the appointment of a trustee or examiner in any of the Borrowers' bankruptcy cases with any powers to operate or manage the financial affairs of one or more Borrowers.
7. The Bankruptcy Court enters a final order that in any way modifies the Final Financing Order without consent of DIP Agent and the DIP Lenders, or the Final Financing Order ceases to be in full force and effect.
8. Borrowers file a motion or other pleading with the Bankruptcy Court seeking to obtain additional financing *pari passu* or senior to the DIP Loan.
9. The entry of any order of the Bankruptcy Court confirming

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any plan of reorganization that does not contain a provision for termination of the DIP Loan and repayment in full in cash of all of the DIP Obligations under the DIP Loan on or before the effective date of such plan

10. Such other defaults as are customary for loan transactions and investments of a similar size and nature.

The DIP Loan and each DIP Lender's interest therein shall be freely transferable by the DIP Lenders to their affiliates and to other financial institutions.

Remedies on Default:

Final Financing Order to provide that, upon the occurrence and during the continuation of an Event of Default under the DIP Loan, the DIP Agent, at the direction of the DIP Lenders, may declare the principal of and accrued interest on the outstanding borrowings to be immediately due and payable along with acceleration of the other DIP Obligations and terminate, as applicable, any further commitment to lend to the Borrowers.

III. Other Terms

Conditions Precedent:

The Closing shall be subject to various conditions precedent customary for loan transactions and investments of a similar size and nature, including but not limited to:

1. Full, immediate and complete access to all of Borrowers' books and records, including collateral files;
2. Satisfactory completion of legal and collateral due diligence and transaction structuring, including due diligence concerning the Borrowers' bankruptcy process and the receipt of all required court approvals for the DIP Loan, including approval of this Term Sheet by no later than May [*****], 2006, approval of the Final Financing Order by no later than [*****], 2006, and closing of the transactions contemplated thereby by no later than [*****], 2006;
3. Satisfactory completion of business due diligence, including but not limited to (i) a review of Borrowers' books and records by an independent third party, retained by DIP Agent and acceptable to Borrowers, (ii) review of Borrowers' material agreements, including but not limited to collective bargaining and pension agreements, (iii) review of Borrowers' cash flow projections and the underlying assumptions and (iv) review of mortgage collateral, including without limitation status as valid perfected

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mortgage liens, lender's right of access to underlying properties pursuant to the applicable loan documents in order to verify, among other things, environmental and structural condition, and verification of outstanding principal balance of loans;

4. Execution of definitive agreements, instruments, mortgages, and documents related to the DIP Loan (including without limitation the Final Financing Order), each satisfactory in form and substance to Fortress in its sole and absolute discretion, including a satisfactory cash management system;
5. The absence of any material adverse change in the business or financial condition of Borrowers or the capital markets from the date of this DIP Term Sheet until the Closing;
6. Satisfactory completion of the investment committee approval process of Fortress;
7. Satisfactory security in all relevant jurisdictions;
8. Completion, receipt and review by the DIP Agent of all lien search reports and lien perfection documentation as may be satisfactory to the DIP Agent with respect to the DIP Collateral and satisfactory perfection of Lender's security interest in the underlying collateral supporting the DIP Loan, including cash, marketable securities, litigation claims, mortgage collateral and real estate;
9. Receipt of satisfactory legal opinions;
10. Reimbursement in full in cash of all of DIP Lenders' fees, costs and expenses;
11. No litigation commenced which has not been stayed by the Bankruptcy Court and which, if successful, would have a material adverse impact on the Borrowers, their business or ability to repay the DIP Loan, or which would challenge the transactions under consideration; and
12. Such other conditions as Fortress may determine.

Final Financing Order:

A financing order in form and substance acceptable to DIP Agent and DIP Lenders to be entered on the docket of the Bankruptcy Court by no later than May [*****,] 2006 ("Final Financing Order"), such order to include, without limitation, provisions (i) modifying the automatic stay to the extent necessary to permit or

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effectuate the terms of the Final Financing Order and DIP Loan documents, (ii) providing for automatic relief from such stay to permit the enforcement of DIP Agent's and the DIP Lenders' remedies under the DIP Loan, (iii) prohibiting the incurrence of debt with priority equal to or greater than that of the DIP Agent or the DIP Lenders, and (iv) prohibiting any granting or imposition of liens other than the permitted liens and other liens acceptable to DIP Agent.

Expenses:

An initial expense deposit of \$150,000 (the "Initial Deposit") in cash shall be paid to Fortress upon execution hereof in accordance with the approval procedures set forth below (the "Deposit"). Such Deposit will be applied by Fortress toward completion of due diligence and other matters with respect to this transaction, including, but not limited to legal (including reasonable fees and expenses of Sidley Austin LLP, counsel to the DIP Agent), compliance audits, appraisals, consulting, and travel expenses, whether or not the transactions contemplated herein are consummated. In the event that the costs, fees and expenses incurred by Fortress in connection with its due diligence and any other matters relating to this transaction exceed the amount of the Deposit, the Borrowers hereby agree to promptly reimburse Fortress for such reasonable costs, fees and expenses in the amount of such excess, whether or not the transactions contemplated herein shall have been, or are, consummated (and Fortress may request additional expense advances hereunder). If Fortress concludes for any reason (in its sole and absolute discretion) not to proceed with the transactions contemplated hereby, Fortress will notify Borrowers and will promptly return the balance of the Deposit by Borrowers, after deducting all costs and expenses (including without limitation fees and costs of consultants and attorneys involved in the drafting of this proposed Term Sheet, long form documentation and the due diligence process actually incurred by Fortress in connection with its review and documentation of this transaction). The Deposit will not be segregated and may be commingled with other funds of Fortress, and Borrowers will not be entitled to receive interest on the Deposit if returned to Borrowers.

Exclusivity:

For a period of ten (10) days following acceptance of this Term Sheet, neither Borrowers nor any affiliate shall (nor will they permit its officers, directors, agents, brokers, representatives or affiliates to), directly or indirectly, solicit, initiate, engage in or encourage any negotiations or discussions with respect to any offer or proposal to make an investment, loan or other commitment of capital for Borrowers with the potential effect of reducing or

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eliminating the financing contemplated by this Term Sheet.

Procedural Terms:

This Term Sheet is not a commitment to make a loan or an investment and Fortress shall not be under any obligation to do so. Rather, upon acceptance of this Term Sheet and payment of the required Deposit, this Term Sheet shall evidence the intention of Fortress to commence its due diligence and its internal financing approval process, and shall evidence Borrowers' agreement to pay and reimburse Fortress as provided herein, whether or not any financing is ultimately consummated.

Commitment:

Within ten (10) days of the execution of this Term Sheet by Borrowers and Fortress, and Borrowers having provided Fortress with immediate and full access to all bankruptcy pleadings and documentation and evidence of outstanding principal balance of selected major loans to Fortress' satisfaction in its sole and absolute discretion, Fortress will either terminate this Term Sheet or advise Borrowers in writing that this Term Sheet is now a Commitment to make the DIP Loan subject to the occurrence and satisfaction of each of the Conditions Precedent set forth above.

Termination:

Except for the obligation of Borrowers to reimburse Fortress for its fees and expenses, indemnification and the obligations of Borrowers under the exclusivity provisions above (all of which obligations shall survive the expiration of this Term Sheet), this Term Sheet automatically shall expire and be of no further force or effect as of May [*****], 2006 (the "Termination Date") or upon the occurrence of any of the following events:

1. Borrowers fail timely to obtain Bankruptcy Court approval to, or otherwise execute this Term Sheet by May [*****], 2006;
2. Prior to any such acceptance, Fortress notifies Borrowers that this Term Sheet is withdrawn;
3. Fortress notifies Borrowers that the results of its due diligence are unsatisfactory for any reason; or
4. Fortress notifies Borrowers that it has decided not to proceed with the transaction for any reason in its sole and absolute discretion.

Indemnification:

Borrowers hereby agree to indemnify and hold harmless Fortress and each of the DIP Lenders and each of their respective affiliates and each of their respective officers, directors, employees, agents, advisors and representatives (each, an "Indemnified Party") from and against any and all claims, damages, losses, liabilities and

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expenses (including, without limitation, fees and disbursements of counsel and other authorized agents and representatives), that may be incurred by or asserted or awarded against any Indemnified Party (including, without limitation, in connection with any investigation, litigation or proceeding or the preparation of a defense in connection therewith), arising out of or in connection with or by reason of the transactions contemplated hereby, except to the extent arising from an Indemnified Party's gross negligence or willful misconduct. In the case of an investigation, litigation or other proceeding to which the indemnity in this paragraph applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by Borrowers, any of their respective directors, security holders or creditors (including any official committee), an Indemnified Party or any other person or an Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated.

No Indemnified Party shall have any liability (whether direct or indirect, in contract, tort or otherwise) to Borrowers, any of their affiliates or any of their respective security holders or creditors for or in connection with the transactions contemplated hereby, except for direct damages (as opposed to special, indirect, consequential or punitive damages, including, without limitation, any loss of profits, business or anticipated savings) determined in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct.

Confidentiality:

Except as required by law or in connection with the implementation of this Term Sheet, the terms hereof will be kept strictly confidential by the Borrowers and may only be disclosed to the Borrowers' affiliates, legal counsel, financial advisors, financing sources and consultants who have been informed of, and agree to abide by, the confidentiality of this Term Sheet. To the extent that any disclosure becomes legally required, Fortress shall be notified promptly and before the required disclosure is made.

Governing Law, Waiver of Jury Trial:

This Term Sheet shall be governed by the laws and rules applicable to Borrowers' federal bankruptcy proceedings, including the United States Bankruptcy Code (11 U.S.C. § 101 *et seq.*), the Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules of the United States Bankruptcy Court for the District of Nevada. The definitive transaction documents will be governed by such law and the laws of the State of New York applicable to contracts made and to be performed in that State. EACH PARTY HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY OR ANY CLAIM OR CAUSE OF ACTION ARISING IN CONNECTION WITH THIS TERM

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SHEET, THE DIP LOAN OR ANY OTHER RELATED FINANCING, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE.

Acceptance:

Borrowers shall promptly seek Bankruptcy Court approval to execute this Term Sheet and to become bound by the terms hereof (including provisions for expense reimbursement), such Bankruptcy Court order to be signed, filed and entered on the docket within fifteen (15) days of the date hereof, and in any event by no later than May [*****], 2006. Upon entry of an order approving Borrowers' execution of this Term Sheet, the expense reimbursement advance shall be promptly wired to Fortress upon further instruction. If such Bankruptcy Court order is not entered on or before such date, unless such date is extended by Fortress in writing in its sole and absolute discretion, this Term Sheet shall automatically terminate and be without further effect.

If Borrowers determine in good faith that Bankruptcy Court approval is not required to execute this Term Sheet, then with the consent of DIP Agent (such consent to be granted or withheld in DIP Agent's sole and absolute discretion), Borrowers shall accept such terms by returning a fully executed copy hereof by facsimile to (212) 798-6099, attention Constantine Michael Dakolias and Joseph Tansey, email addresses cdakolias@fortressinv.com, and jtansev@fortressinv.com, c/o Fortress Credit Corp, with a copy to counsel for Fortress, attention Joel G. Samuels and Marc I. Hayutin, facsimile number (213) 896-6600, e-mail addresses jsamuels@sidley.com, and mhayutin@sidley.com, and wiring the expense advance to Fortress's account pursuant to further instruction. All notices, notifications, amendments, extensions and waivers hereunder must be signed and in writing to be effective. The provisions herein under the headings Indemnification, Governing Law, Exclusivity, Confidentiality, Procedural Terms and Expenses are binding and shall survive the termination of this Term Sheet.

Miscellaneous:

This summary of terms and conditions does not purport to summarize all of the conditions, covenants, representations, warranties and other provisions which would be contained in definitive credit documentation for the DIP Loan contemplated hereby.

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AGREED AND ACCEPTED:

FORTRESS CREDIT CORP

By: 

Name: Constantine Michael Dakolias
Title: Chief Credit Officer

USA COMMERCIAL MORTGAGE
COMPANY, LLC

USA CAPITAL REAL ESTATE ADVISORS,
LLC

USA CAPITAL FIRST TRUST DEED
FUNDING, LLC

USA CAPITAL DIVERSIFIED TRUST
DEED FUNDING, LLC

By: 

Name: Thomas J. Allison
Title: Chief Executive Officer of
all such entities

EXHIBIT “B”

Exhibit B

PRELIMINARY INFORMATION, CANNOT BE RELIED UPON

USA Capital
Construction Budget Shortfall
05/16/06

Loan	Amount
Binford	\$925,000
Boise Gowan	\$125,000
Bundy \$2.5m	\$200,000
Bundy \$5m	\$750,000
Bundy \$7.5m	\$800,000
Bundy 8.9m	\$8,900,000
Castaic Partners III	\$325,000
Columbia Managing	\$890,000
Comvest	\$375,000
Cornman Toltec	\$175,000
Copper Sage Phase II	\$7,750,000
Eagle Meadows	\$4,580,000
Elizabeth May	\$1,200,000
Foxhill 216	\$3,020,000
Franklin Stratford	\$975,000
Gateway Stone	\$3,045,000
Gramercy	\$2,216,216
J Jireh	\$275,000
La Hacienda	\$1,645,000
Lerin Hills	\$2,550,000
Meadow Creek Partners	\$11,700,000
Ocean Atlantic	\$500,000
Palm Harbor	\$520,000
Preserve	\$596,000
Rio Rancho	\$3,850,000
Slade	\$225,000
So Cal Land 2nd	\$200,000
Standard Property	\$8,110,000
The Gardens Phase II	\$6,500,000
University Estates	\$200,000
Total	\$73,122,216